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**RICHARD W. WIERKING**  
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**NORTHERN DISTRICT OF CALIFORNIA**

**E-filing**

**UNITED STATES DISTRICT COURT**  
**FOR THE NORTHERN DISTRICT OF CALIFORNIA**  
**SAN FRANCISCO DIVISION**

**JONATHAN JACINTO,**

Plaintiff,

vs.

**MIDLAND CREDIT**  
**MANAGEMENT, INC.,**

Defendant.

**JCS**  
) Case No. **CV 10 0869**  
)  
) **COMPLAINT FOR VIOLATION**  
) **OF FEDERAL FAIR DEBT**  
) **COLLECTION PRACTICES ACT,**  
) **ROSENTHAL FAIR DEBT**  
) **COLLECTION PRACTICES ACT,**  
) **AND INVASION OF PRIVACY**  
)  
)  
)

**I. INTRODUCTION**

1. This is an action for damages brought by an individual consumer for Defendant's violations of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692, *et seq.* (hereinafter "FDCPA"), and the Rosenthal Fair Debt Collection Practices Act, Cal Civ Code § 1788, *et seq.* (hereinafter "RFDCPA"), both of which prohibit debt collectors from engaging in abusive, deceptive, and unfair practices. Ancillary to the claims above, Plaintiff further alleges claims for

1 invasion of privacy arising from intrusion upon seclusion and public disclosure of  
2 private facts.

## 3 4 **II. JURISDICTION**

5 2. Jurisdiction of this Court arises under 15 U.S.C. § 1692k(d).

## 6 7 **III. PARTIES**

8 3. Plaintiff, JONATHAN JACINTO (“Plaintiff”), is a natural person  
9 residing in San Mateo county in the state of California, and is a “consumer” as  
10 defined by the FDCPA, 15 U.S.C. § 1692a(3) and is a “debtor” as defined by Cal  
11 Civ Code 1788.2(h).

12  
13 4. At all relevant times herein, Defendant, **MIDLAND CREDIT**  
14 **MANAGEMENT, INC.**, (“Defendant”) was a company engaged, by use of the  
15 mails and telephone, in the business of collecting a debt from Plaintiff which  
16 qualifies as a “debt,” as defined by 15 U.S.C. §1692a(5), and a “consumer debt,”  
17 as defined by Cal Civ Code § 1788.2(f). Defendant regularly attempts to collect  
18 debts alleged to be due another, and therefore is a “debt collector” as defined by  
19 the FDCPA, 15 U.S.C. § 1692a(6), and RFDCPA, Cal Civ Code § 1788.2(c).

## 20 21 22 **IV. FACTUAL ALLEGATIONS**

23 5. At various and multiple times prior to the filing of the instant  
24 complaint, including within the one year preceding the filing of this complaint,  
25 Defendant contacted Plaintiff in an attempt to collect an alleged outstanding debt.  
26  
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28

1 Defendant's conduct violated the FDCPA and the RFDCPA in multiple ways,  
2 including but not limited to:  
3

- 4 a) Communicating or threatening to communicate credit information  
5 which is known or which should be known to be false, including (§  
6 1692e(8));
- 7 b) Using Plaintiff, or distributing to Plaintiff, a written communication  
8 which simulates or is falsely represented to be a document authorized,  
9 issued, or approved by any court, official, or agency of the United States  
10 or any State, or which creates a false impression as to its source,  
11 authorization, or approval (§ 1692e(9));
- 12 c) Using false representations and deceptive practices in connection with  
13 collection of an alleged debt from Plaintiff, including (§ 1692e(10))
- 14 d) Causing Plaintiffs telephone to ring repeatedly or continuously with  
15 intent to harass, annoy or abuse Plaintiff (§ 1692d(5)); Defendant called  
16 Plaintiff on average more than two times a day, oftentimes more than  
17 five times a day, on average ten times a week, and at least twenty times  
18 a month;
- 19 e) Placing (a) telephone call(s) to Plaintiff without disclosure of the caller's  
20 true identity or a registered alias name along with the name of the  
21 agency authorizing the call (Cal Civ Code § 1788.11(b));
- 22 f) Causing a telephone to ring repeatedly or continuously to annoy  
23 Plaintiff (Cal Civ Code § 1788.11(d)); Defendant called Plaintiff on  
24 average more than two times a day, oftentimes more than five times a  
25 day, on average ten times a week, and at least twenty times a month;
- 26 g) Communicating, by telephone or in person, with Plaintiff with such  
27 frequency as to be unreasonable and to constitute an harassment to  
28 Plaintiff under the circumstances (Cal Civ Code § 1788.11(e));  
Defendant called Plaintiff on average more than two times a day,  
oftentimes more than five times a day, on average ten times a week,  
and at least twenty times a month;

- 1 h) Using unfair or unconscionable means against Plaintiff in connection  
2 with an attempt to collect a debt (§ 1692f));
- 3
- 4 i) Where Defendant had not yet made an attempt to contact Plaintiff's  
5 counsel or had not given Plaintiff's counsel sufficient time to respond to  
6 the initial attempt to communicate with Plaintiff's counsel, and where  
7 Plaintiff's counsel had not given Defendant permission to contact  
8 Plaintiff directly, communicating with Plaintiff directly after learning  
9 that Plaintiff is being represented by counsel (§ 1692c(a)(2)); Plaintiff's  
10 counsel sent a letter on January 4, 2010 and Defendant sent a letter to  
11 Plaintiff dated January 8, 2010, representing that Plaintiff should start a  
12 payment plan regarding the alleged debt.

13 6. Defendant's aforementioned violations of the FDCPA and RFDCPA  
14 also constitute an intentional intrusion into Plaintiff's private places and into  
15 private matters of Plaintiff's life, conducted in a manner highly offensive to a  
16 reasonable person. Plaintiff had a subjective expectation of privacy that was  
17 objectively reasonable under the circumstances.

18 7. Defendant's aforementioned disclosure of facts regarding Plaintiff's  
19 debt to third parties constitutes a public disclosure of a private fact not of  
20 legitimate public concern. Defendant's disclosures were highly offensive to a  
21 reasonable person.

22 8. As a result of the above violations of the FDCPA, RFDCPA and  
23 invasion of privacy, Plaintiff suffered and continues to suffer injury to Plaintiff's  
24 feelings, personal humiliation, embarrassment, mental anguish and emotional  
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26  
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1 distress, and Defendant is liable to Plaintiff for Plaintiff's actual damages,  
2 statutory damages, and costs and attorney's fees.  
3

4 **COUNT I: VIOLATION OF FAIR DEBT**  
5 **COLLECTION PRACTICES ACT**

6 9. Plaintiff reincorporates by reference all of the preceding paragraphs.  
7

8 **PRAYER FOR RELIEF**

9 WHEREFORE, Plaintiff respectfully prays that judgment be entered  
10 against the Defendant for the following:  
11

- 12 A. Declaratory judgment that Defendant's conduct  
13 violated the FDCPA;  
14 B. Actual damages;  
15 C. Statutory damages;  
16 D. Costs and reasonable attorney's fees; and,  
17 E. For such other and further relief as may be just and proper.  
18

19 **COUNT II: VIOLATION OF ROSENTHAL**  
20 **FAIR DEBT COLLECTION PRACTICES ACT**

21 10. Plaintiff reincorporates by reference all of the preceding paragraphs.

22 11. To the extent that Defendant's actions, counted above, violated the  
23 RFDCPA, those actions were done knowingly and willfully  
24

25 **PRAYER FOR RELIEF**

26 WHEREFORE, Plaintiff respectfully prays that judgment be entered  
27 against the Defendant for the following:  
28



- A. Declaratory judgment that Defendant's conduct violated the RFDCPA;
- B. Actual damages;
- C. Statutory damages for willful and negligent violations;
- D. Costs and reasonable attorney's fees,
- E. For such other and further relief as may be just and proper.

**COUNT III: COMMON LAW INVASION OF PRIVACY BY INTRUSION  
AND INVASION OF PRIVACY BY PUBLICATION OF PRIVATE FACTS**

12. Plaintiff reincorporates by reference all of the preceding paragraphs.

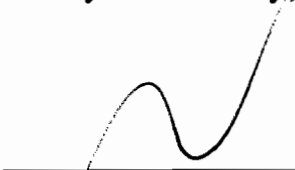
**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff respectfully prays that judgment be entered against the Defendant for the following:

- A. Actual damages
- B. Punitive Damages; and,
- C. For such other and further relief as may be just and proper.

**PLAINTIFF HEREBY REQUESTS A TRIAL BY JURY**

Respectfully submitted this 12<sup>th</sup> day of February, 2010.

By:   
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